In the Hon'ble the High Court of Uttaranchal
At Nainital
WRIT PETITION NO.35 (S/B) OF 2003

Kailash Chandra Sharma ……
Petitioner

Versus

President Uttaranchal Rajya Prathmik
Shishak Sangh, Race Course, Dehradun and another……. Respondents

Hon'ble Irshad Hussain J.
Hon'ble M.M. Ghildiyal J.

Petitioner has challenged the order dated 6/7 January, 2003, passed by the President of Uttaranchal Rajya Prathmik Shishak Sangh, Race Course, Dehradun whereby the petitioner was removed from the post of General Secretary of Uttaranchal Rajya Prathmik Shishak Sangh.

Heard Sri C.D. Bahuguna learned counsel for the petitioner and Sri Manoj Tiwari learned counsel for the respondent.

The facts of the case are that the Uttaranchal Rajya Prathmik Shishak Sangh, Dehradun was constituted in November, 2000 and was registered on 18.12.2002 under Societies Registration Act. The government of Uttaranchal also granted recognition to the aforesaid Uttaranchal Rajya Prathmik Shishak Sangh.

After creation of Uttaranchal the District Legal Federation was converted as Uttaranchal Rajya Prathmik Shishak Sangh. After the constitution of Uttaranchal Rajya Prathmik Shishak Sangh, Sri Padam Singh was nominated as the President and Kailash Chandra Sharma, the petitioner as General Secretary. District Legal President and General Secretary continued as office bearers. As per by law of the Uttaranchal Rajya Shishak Sangh, the tenure of the working of President and General Secretary of the Sangh was fixed for three years.

The President of the Uttaranchal Rajya Prathmik Shishak Sangh by the letter dated 6/7 January, 2003, sent a communication to the petitioner to the effect that a meeting of the working committee of Shishak Sangh was held on 06.01.2003 and a decision has been taken to remove the petitioner from the office of General Secretary of the Sangh for alleged financial

irregularities, indiscipline and misbehavior. It is this order which is under challenged in the present petition.

Learned counsel for the petitioner has submitted that the allegations levelled against the petitioner, are totally false and baseless. He has further submitted that as per by laws, the petitioner could be removed only by passing no confidence motion by 2/3 majority of the members of general body. He has further submitted that as per by laws no confidence motion can be moved against any office bearer of the State Legal Federation unless nominated members from each district are present in the meeting called for no confidence motion. Neither any special meeting was organized for moving no confidence motion nor the nominated members were present in the alleged meeting held on 06.01.2003 and as such the removal of the petitioner was absolutely illegal. The reputation and the goodwill of the petitioner has been substantially lowered in the society and in view of the above, the order passed on 6/7 January, 2003 is not sustainable in the eye of law and as such is liable to be quashed.

In support of his contention he has placed reliance on the judgment in the case of **D.K.Yadav Vs. J.M.A. Industries Ltd. Reported in 1993 SCC L&S (Page No.723) and Board of Trustees of the Port of Mumbai Vs. Delipkumar, Raghavendranath and others reported in AIR 1982 SCC (Page No.109).** The facts of the aforesaid cases are quite different to the facts of the present case and the petitioner cannot take any benefit from the aforesaid authorities.

Sri Manoj Tiwari has filed counter affidavit on behalf of the respondents. A preliminary objection was raised on behalf of the respondents about the maintainability of this writ petition against the non-statutory association. Admittedly the Uttaranchal Rajya Prathmik Shishak Sangh is an association of teachers of Uttaranchal, it has not been created under any statute or statutory rules. Though the association is registered under the Societies Registration Act, mere registration of the society could not make the writ petition maintainable. The petitioner has submitted that the union is recognized by the government and, therefore, the writ petition is maintainable. We do not find force in the submission of learned counsel for petitioner. Recognition by itself will not make the writ petition maintainable

against the non statutory voluntary unions. The union is neither discharging public functions nor it is constituted under any Act or Statute. Learned counsel for the respondents in support of this preliminary objection has placed reliance on the cases of **Sukhdev Singh Vs. BSS, 1975, SSC (Page No. 1331), R.D. Sethi Vs. International Airport Authority, AIR 1979 SCC (Page No. 1628) and Chandra Mohan Khanna Vs. NCERT and others reported in 1991(4) SCC (Page No. 578).** As Already held though the union is registered and recognized by the government it is neither constituted under any statute nor is functioning any public duty. The writ petition against respondent union is not maintainable. Learned counsel for the respondents has further submitted that the petitioner has filed a suit before the Civil Judge praying for the same relief which has been sought by means of this writ petition. He has drawn our attention to the para – 5 of the plaint wherein the petitioner has submitted that the act of the respondents to pass resolution on 6/7 January, 2003 is illegal. He has also drawn our attention to the relief clause of the plaint. The first relief sought by the petitioner is to set aside the order dated 6/7 January, 2003 by which the petitioner has been removed from the office of General Secretary of the Uttaranchal Rajya Prathmik Shishak Sangh.

Since the petitioner has filed suit before the Civil Court, the petitioner cannot be permitted to seek two remedies simultaneously and in view of this the writ petition is not maintainable.

For the reasons stated above the writ petition is not maintainable and is dismissed. No order as to costs.

September 26, 2003
ASWAL

(Irshad Hussain J.) **(M.M. Ghildiyal J.)**